IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 39/2005
AND
CIVIL APPLICATION NO. 228/2005

1. Lizarda Gonsalves.
2. Manuel Gonsalves,
3. William Gonsalves,
4. Darryl Gonsalves,
5. Glafie Gonsalves,

All r/o. H.No. 1045,
Goa Velha, Ilhas, Goa. ..... Appellants.

V/s.

1. Shri Baltasar Gonsalves,
expired:
1a) Mrs. Maria Rita Rodrigues,
married to

1b) Mr. Martinho Rodrigues,

Both residing at House No.32,
Borimol, Quepem – Goa;

1c) Mr. Edwin Anthony Gonsalves
married to

1d) Mrs. Alice Gonsalves,

both residing at House No.925,
Zuari, Goa Velha, Ilhas – Goa.

2) Shri Francisco Xavier Gonsalves
(expired) :

2a) Mrs. Manuelita Gonsalves
married to :

2 b) Shri Valentinho Rodrigues,
both residing at House No.372,
No Bairro Kinelem,
Sancoale-Goa.

2c) Mrs. Piedade Gonsalves, married to

2d) Shri Rocky Fernandes,

both residing at House No.553, Poriebhat, Verna, Salcete-Goa.

2e) Shri Godfrey Gonsalves, major, residing at Zuari, Goa Velha, Ilhas, Goa.

(3)Shri Xavier Gonsalves (expired) married to Smt. Berta Gonsalves,

(4)Mrs. Flavina Gonsalves, (expired) married to Joseph Carvalho (expired),

4a) Miss Brigida Carvalho, major, spinster, residing at Dando, Goa Velha, Ilhas – Goa.

4b) Mrs. Jonita Carvalho, married to

4c) Mr. Basilio D'Cunha, married to

both residing at Forgottem, Goa Velha, Ilhas, Goa.

4d) Mrs. Celia Carvalho, married to

4e) Mr. Cruz Fernandes,

both residing at Padri Bhat, Agacaim, Ilhas-Goa.

4f) Shri Belson Carvalho, married to;

4g) Mrs. Rosylin Carvalho, both residing at Dando, Goa Velha, Ilhas, Ilhas, Goa.

4h) Mr. Bruno Carvalho, married to;

4i) Marylin Carvalho,

both residing at Dando, Goa Velha, Ilhas – Goa.

4j) Nicholas Caervalho, bachelor, residing at Dando, Goa Velha, Ilhas, Goa. ..... Respondents.

Mr. P. S. Rao, Advocate for the appellants.

Mr. R. G. Ramani, Advocate for respondents No.1, 1(c) and 1(d).

CORAM : P.V. KAKADE, J.

DATE : 7th August, 2006.

ORAL JUDGMENT :

Heard both sides. Rule. By consent Rule made returnable forthwith.

2. This appeal arises out of Inventory Proceedings No. 43/2001 decided by the Civil Judge, Sr. Division, Panaji rejecting the objections of the interested parties raised in the course of the said proceedings. The applicant had filed the proceedings seeking indulgence of the Court on the ground that he was an interested party and objected to the initiation of the inventory proceedings by the appellants on the ground that prior to the death of Manuelinho and Piedade Gonsalves somewhere in the year 1960 and 1961, the father

of the interested parties, Teodor Gonsalves was allowed by his parents, Inventariados to construct a house in the property surveyed under No.185/6. He was also given possession of the land surveyed under No.185/6 as well as of the plot now bearing Survey No. 183/12. Accordingly, late father of the interested parties constructed a house in Survey No.185/6 in the year 1961 and continued to possess the said property during the life time of his parents. According to them, the property bearing Survey No. 183/12 was jointly collateral by the said Teodar Gonsalves and Xavier Gonsalves and accordingly, their names have been recorded as tenants in the other right's column of the survey records. On these and other grounds, the interested parties claimed right in the property. In support of their claim, they filed certain documents on record.

Plea of the parties came to be challenged by the applicants. Upon adjudication of the dispute, the trial Judge came to the conclusion that there was no judicial settlement and arrangement on distribution over the inheritance of the deceased and the oral family settlement and arrangement resolving the dispute in the proceedings of the nature could not have a force of law to object the maintainability of the inventory proceedings and on such a ground, the plea of the interested parties came to be rejected.

3. The learned Counsel for the appellants raised an objection to the findings recoded by the trial Court mainly on the ground that

no opportunity was given to them to lead oral evidence in support of their claim. In that regard, my attention was invited to Article 1374 of Family Laws of Goa, Daman and Diu along with Article 1383.

On the other hand, learned Counsel for the respondents placed reliance on Article 1380 while submitting that even though the learned trial Judge did not specifically mention, the only course available for the appellants was to file a separate suit in order to get their alleged right established.

4. Taking into account the arguments advanced on behalf of the parties, I have no doubt whatsoever that the factual scenario reveals that the appellants had specifically come with a case that there was an oral settlement or arrangement in respect of the family properties, which aspect appears to be discarded from consideration by the trail Court, without giving opportunity to the parties concerned to lead oral evidence exhaustively before holding that the plea of the interested parties was devoid of any merit, which aspect, in my considered view gives way to take into account this lacunae, which obviously remained to be considered. Under the circumstances, I am of the view that the matter deserves to be remanded for limited purpose for recording of oral evidence, if any, to be led by the present appellants/interested parties, with a direction to the trial Court to record such evidence, after giving opportunity to the respondents to lead evidence, if any and for adjudication of the

issue in the light of the legal provisions .

5. In the result, the order dated 11.1.05 passed by the Civil Judge, Sr. Division, Panaji is, hereby, set aside. The matter is remanded to the lower Court with a direction that the Court shall give opportunity to the appellants to lead oral evidence on the issue of its alleged arrangement on distribution over the inheritance of the deceased. The respondents would also be at liberty to rebut such evidence, if any, by placing proper evidence on record. The trial Court shall, after recording such evidence, decide the issue involved within a period of six months from the date of receipt of writ of this Court. With these directions, the appeal stands disposed of with no order as to costs. Consequently, the civil application No.228/2005 also stands disposed of with no order as to costs. Pending the adjudication, the parties shall maintain status quo with regard to the property.

P.V. KAKADE, J.

ssm.